

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE:

DATE:

JUN 9 1975

MATTER OF: **B-183484****Harold C. Ferrin - Claim for temporary quarters allowance**

DIGEST:

Reclaim voucher of employee for temporary quarters for family beyond 30-day period may not be certified for payment. There is no provision under 5 U.S.C. 5724(a) or OMB Circular No. A-56 providing for payment for temporary quarters beyond 30 days when employee is transferred to and from stations within the continental United States.

By letter dated March 14, 1975, the Deputy Director, General and Program Accounting, Department of Housing and Urban Development, requested our decision as to whether the reclaim voucher of Harold C. Ferrin in the amount of \$309.37 for temporary quarters for dependents may be paid.

The record indicates that Mr. Ferrin reported for duty on June 28, 1971, at the Accounting Division, Denver Region, Department of Housing and Urban Development in Denver, Colorado, after a permanent transfer from Philadelphia, Pennsylvania. His family remained in Philadelphia. The employee began a temporary assignment on July 10, 1971, and did not return to Denver until November 18, 1971. He submitted a claim and was paid for subsistence expenses while occupying temporary quarters for the periods June 27, 1971, through July 9, 1971, and November 19, 1971, through December 5, 1971, a total of 30 days.

In July 1972 the employee's family moved from Philadelphia to Denver. He submitted a claim for subsistence expenses for his family while occupying temporary quarters for the period July 11 and July 12, 1972, at Philadelphia, and for the period July 13 through July 18, 1972, at Denver. The latter claim in the amount of \$309.37 was disallowed in accordance with Office of Management and Budget Circular No. A-56. A reclaim voucher was submitted on December 27, 1973.

Claims for reimbursement for temporary quarters are governed by 5 U.S.C. 5724a(a)(3) (1970) which in turn is implemented by Office of Management and Budget Circular No. A-56.

Title 5, United States Code, section 5724a(a)(3) states:

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"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays the expenses of travel and transportation under section 5724(a) of this title:

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"(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The regulations shall prescribe average daily rates for subsistence expenses per individual, not in excess of the maximum per diem rates prescribed by or under section 5702 of this title, for the location in which the temporary quarters are located. Reimbursement for subsistence expenses actually incurred may not exceed these daily rates for the first 10 days of the period, two-thirds of the rates for the second 10 days, and one-half of the rates for the balance of the period, including the additional 30 days."

Section 2.5b(1) of Office of Management and Budget Circular No. A-56 (OMB), revised June 26, 1969 (similar provisions are contained in section 8.2a, OMB Circular No. A-56, revised August 17, 1971), and in effect at the time of Mr. Ferrin's transfer and during the period of his claim states:

"b. Conditions and limitations for eligibility.

"(1) Subsistence expenses of the employee, for whom a permanent change of station is authorized or

approved, and each member of his immediate family (defined in 1.2d), for a period of not more than 30 consecutive days while necessarily occupying temporary quarters will be allowed when the new official station is located in the 50 States, the District of Columbia, United States territories and possessions, the Commonwealth of Puerto Rico and the Canal Zone, provided a written agreement as required in 1.3c is signed in connection with such transfer. The period of consecutive days may be interrupted to take account of the time that is allowed for travel between the old and new official stations or which is due to circumstances attributable to official necessity, as for example, an intervening temporary duty assignment."

Mr. Ferrin contends that the phrase "due to circumstances attributable to official necessity" found in section 2.5b(1) of OMB Circular No. A-56 provides for an extension of the 30-day limitation under certain circumstances. We must agree with the interpretation of the Department of Housing and Urban Development that the above-quoted phrase only permits an interruption of the 30-day period but it does not extend it. There are no provisions under the governing statute or regulation that allow payment for temporary quarters beyond 30 days when the transfer is within the continental United States. See B-177842, March 27, 1973; 48 Comp. Gen. 119 (1968). In this connection we point out that this Office has no authority to waive or modify a statute or statutory regulations even though extenuating circumstances may be present. See 49 Comp. Gen. 145 (1969).

Accordingly, the reclaim voucher may not be certified for payment.

R. F. KENNEL

Deputy, Comptroller General
of the United States